Supreme Court, U.S.
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No. 00-147

In the
Supreme Court of the United States

James Clifford Akins,

Petitioner,

vs.

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent disagrees with Petitioner's statement of the legal issues presented for review. The issues considered by the Minnesota Court of Appeals were as follows:

> Whether a person's right under the Fourth Amendment to be free from unreasonable search and seizure is violated when an officer enters the person's open garage to speak to the person therein who had driven into the garage during the course of an otherwise valid stop by the officer?

> Whether an officer has Constitutional grounds to stop a vehicle based on the report of an identified citizen caller contemporaneously relaying observations of bad driving conduct of the vehicle to the officer through his dispatcher?

> Whether a person's right to due process under the Fourteenth Amendment is violated by a criminal prosecution subsequent to a civil implied consent proceeding?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent State of Minnesota respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Minnesota Supreme Court.

OPINIONS BELOW

By order opinion dated and filed April 25, 2000, reprinted in the Appendix to the Petition at A-1, the Minnesota Supreme Court denied Petitioner's Petition for Further Review of an unpublished decision of the Minnesota Court of Appeals. The Minnesota Court of Appeals opinion, reprinted in the Appendix to the Petition at A-2 to A-10, was filed March 14, 2000, affirming the trial court's decision. The trial court, by order dated June 22, 1999, denied Petitioner's motion to suppress evidence and found Petitioner guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process. The trial court's opinion is reprinted in the Appendix to the Petition at A-11 to A-21.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated....

Amendment XIV, United States Constitution

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law

STATEMENT OF THE CASE

The facts of the case are fairly stated in the decision by the Minnesota Court of Appeals, reprinted at the Appendix to the Petition at A-2 to A-10. The following more complete statement of the facts is adapted from Respondent's Brief to the Minnesota Court of Appeals, with citations to the record omitted.

Ms. Johnson, a private citizen, testified that on April 21, 1998 at approximately 8:25 p.m., she was traveling in the far right-hand lane of Interstate 394. As she entered the southbound 169 ramp, a black BMW came all the way from the left-hand lane and "cut her off." The BMW almost hit a cement barrier as it went up on the ramp. The BMW was traveling very fast and then slowed to between 30 and 40 miles per hour at the top of the ramp. There was "tons" of traffic on 169 and the BMW swerved back and forth between lanes, sometimes on the shoulder, then it almost hit a barrier on the left-hand side of the median. The BMW drove almost on the shoulder with its flashers on, then swerved back in front of her to the left lane. Ms. Johnson called 911 because she believed something was wrong with the driver of the BMW, and feared that the driver might be having a seizure.

Ms. Johnson described to the 911 dispatcher the driving behavior she had witnessed. The dispatcher asked Ms. Johnson to follow the vehicle. As she followed, Ms. Johnson provided periodic updates to patrol dispatch. She provided the dispatcher with her name as well as the license number of

the BMW. Eventually, while she and the BMW were in the left-hand turn lane to Baker Road, Ms. Johnson saw a patrol car pass. She was still on the phone with the dispatcher and advised that she saw the patrol car. The dispatcher informed her that the officer saw her and the BMW and that she could go.

Minnesota State Trooper Sutherland was dispatched to respond to Ms. Johnson's 911 call. Dispatch advised him of a possible impaired driver who was weaving from side to side in both lanes. He was informed that the name and telephone number of the 911 caller had been obtained. He was given a description of the driving behavior, and the license number of the BMW. The Trooper proceeded with red lights and siren until he passed both the BMW and Ms. Johnson's vehicle as they were waiting to make the left-hand turn onto Baker Road. When dispatch advised him that he was passing the vehicles, the Trooper pulled over to the right shoulder of Baker Road. When the BMW completed its turn, the Trooper pulled in behind the BMW and activated his red lights. The BMW continued approximately two blocks, then turned into the driveway of a residential address. The overhead garage door opened, and the BMW pulled into the garage.

The Trooper drove his patrol car into the driveway and parked. The Trooper then walked into the garage through the open garage door and initiated conversation with the driver of the BMW, Petitioner, who was still seated in his vehicle. At the time he entered the garage, the Trooper did not believe he had probable cause to arrest Petitioner for DWI. The Trooper did not observe any inappropriate driving conduct himself, other than Petitioner not pulling over for the red lights. The Trooper approached Petitioner to "ask him why the driving conduct -- uh, the way it was the 911 caller giving it out, whether the driver was impaired or having a medical problem."

The Trooper asked Petitioner for his driver's license, and explained to Petitioner why he had stopped him. The Trooper

asked Petitioner how much he had to drink, and Petitioner replied, "too much." The Trooper asked Petitioner to return to the patrol car. Petitioner agreed and both the Petitioner and the Trooper returned to the patrol car, which was outside of the garage.

Both at the time the Trooper spoke with the Petitioner inside the garage and at the patrol car outside the garage, the Trooper detected a strong to moderate odor of consumed alcoholic beverages on the Petitioner's breath. When initially exiting his vehicle, Petitioner lost his balance "a little bit." He swayed as he walked back to the patrol car, and was unable to stand upright without leaning against the patrol car while the Trooper was explaining the standardized field sobriety tests.

As the Trooper was explaining the field sobriety tests, the Petitioner turned and ran toward his garage and headed to the door inside the garage leading to his residence. As Petitioner fled, the Trooper ordered him to stop and informed him that he was under arrest. The Trooper pursued Petitioner to the doorway of the residence and attempted to stop Petitioner as he was about to enter the residence. However, the Trooper was unable to prevent Petitioner from dragging himself and the Trooper through the doorway and into the residence. Once inside, a struggle ensued, after which Trooper Sutherland was able to complete the arrest and apprehension of Petitioner.

Petitioner was transported to the Eden Prairie Police Department where he was read the Minnesota Implied Consent Advisory, and was asked to provide a sample of his breath for testing, which he agreed to do, resulting in a blood alcohol concentration reading of .24. Petitioner was charged with gross misdemeanor driving under the influence, careless driving, and obstructing legal process.

Petitioner's driving privileges were revoked pursuant to Minnesota's civil implied consent law, Minn. Stat. § 169.123 (1996). Petitioner petitioned for judicial review of his

driver's privilege revocation alleging that the evidence of the intoxilyzer results should be suppressed for the same Constitutional grounds asserted in the present petition. The matter came on for hearing on September 16, 1998. The Trooper and the 911 caller testified on behalf of the State. By Order dated October 29, 1998, the court held that the Trooper had probable cause to arrest the Petitioner, and that the Trooper's entry into the Petitioner's garage was legal. (Hennepin County Minnesota District Court File No. 475960.)

Petitioner appealed that Order to the Minnesota Court of Appeals. Prior to briefing the matter, the Minnesota Commissioner of Public Safety entered into a stipulation of voluntary dismissal with Petitioner and administratively rescinded the revocation of Petitioner's driving privileges. The Minnesota Court of Appeals dismissed that appeal by Order dated January 14, 1999. (Minnesota Court of Appeals File No. C3-98-2103.)

Petitioner then brought motion to the criminal court, seeking dismissal of the Complaint and suppression of the intoxilyzer evidence based on the alleged Constitutional violations. A pre-trial suppression hearing was held in Hennepin County District Court on July 6, 1999. The trial court denied Petitioner's motion to suppress and dismiss. The Trial Court then adjudicated Petitioner guilty upon the stipulated facts contained in the Complaint.

Respondent believes that Petitioner's statement of the case contains some confusing references to the trooper going into the "home" and "house" that should be corrected. Page 3 of Petitioner's Brief states:

> "Sutherland's stated purpose in going into the home was to investigate what he had been told concerning petitioner's driving conduct. At the time he first entered the petitioner's house Sutherland testified..."

What is confusing about this statement is that, in reality, it refers to Trooper Sutherland entering the open garage, not the home. Additionally, on page 4, Petitioner states:

> "After entering his home, Sutherland spoke with petitioner, observed the odor of alcohol and asked Appellant [sic] to come out of his home and into the driveway. Petitioner complied. Shortly thereafter petitioner ran back into his house, through the garage area and into his living quarters. . . ."

Again, the reference here to entering the home, and Petitioner coming out of his home, are references to Petitioner's open garage.

REASON FOR DENYING THE WRIT

The reasons why the Supreme Court should deny the Petition in this case are as follows:

A. The Petition was Untimely

The Minnesota Supreme Court's Order denying Petitioner's request for further review was filed April 25, 2000. Under Supreme Court Rules 13(1) and 30(1), a timely Petition to this Court was required to be filed, at the latest, on July 24, 2000. The Petition for Writ of Certiorari to this Court was served and filed via U.S. Mail on July 25, 2000. Service was 91 days after entry of the order by the Minnesota Supreme Court denying further review.

Rule 13(1) of the Supreme Court Rules Provides, in relevant part: "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review." Sup. Ct. R. 13(1).

Rule 30(1) of the Supreme Court Rules Provides, in relevant part: "In the computation of any period of time prescribed or allowed by these Rules ... the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included..." Sup. Ct. R. 30(1).

Excluding April 25, 2000, the day of the act that began the running of the period, the last day of the 90 day period was July 24, 2000. This Court should either decline jurisdiction, or deny the untimely Petition.

B. The Minnesota Court of Appeals' decision does not conflict with relevant decisions of the Supreme Court

The only grounds relied upon by Petitioner in requesting that this Court grant review is that "[the] decision of the Minnesota Supreme Court is at odds with the applicable decisions of this court." (Pet. at 4.) This is not accurate. The Minnesota Court of Appeals' decisions on each of the three issues for which Petitioner seeks a writ do not conflict with relevant decisions of this Court. Indeed, all grounds for the Minnesota Court of Appeals decision are consistent with the decisions of this Court. Accordingly, the petition for writ of certiorari should be denied.

This Court will grant a writ of certiorari to review a state court judgment only for compelling reasons, such as where a state court has decided an important federal question in a way that conflicts with the relevant decisions of this court. S. Ct. R. 10(c). A petition for writ is rarely granted when the asserted error consists of the misapplication of a properly stated rule of law. S. Ct. R. 10.

1. The Minnesota Court of Appeals' Holding that Petitioner did not Have a Legitimate Expectation of Privacy in his Open Garage does not Conflict with Relevant Decisions of this Court

Petitioner argues that the Court of Appeals was erroneous in holding that police do not violate the Fourth Amendment by "going onto a private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches." (Pet. at 4.) However, the Minnesota Court of Appeals decision is consistent with accepted principle of Constitutional law reflected in prior decisions of this Court.

The decision of the Minnesota Court of Appeals correctly states that "[to] claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place where the search or seizure occurred and that society recognizes his expectations as reasonable." (App. to Pet. at A-4) (quoting Minnesota v. Carter, 525 U.S. 83, 88, 119 S.Ct. 469, 473 (1998)). In determining that Petitioner did not have a legitimate expectation of privacy in his open garage, the Minnesota Court of Appeals cited a Minnesota Court of Appeals decision exactly on point, Tracht v. Commissioner of Public Safety, 592 N.W.2d 863 (Minn. App. Apr. 20, 1999), rev. denied (Jul. 28, 1999). The Tract decision, for its part, relied upon Katz v. United States, 389 U.S. 347, 88 S.Ct. 507 (1967), for the proposition that "what a person knowingly exposes to the public, even in his own home...is not subject to Fourth Amendment protection. See Tracht, 592 N.W.2d at 865 (quoting Katz, 389 U.S. at 351, 88 S.Ct. at 511.)

The Minnesota Court of Appeals, in the present matter, held:

> We conclude that Akins did not have a reasonable expectation of privacy in the garage, with its

> overhead door open, that would require the trooper to stop at its threshold and obtain a warrant before questioning him. The garage may not be the usual means of access to a home. But members of the public would reasonably assume that they could use it, when the overhead door was open, to talk to a resident who himself is using the garage as a means of access. Police may reasonably do the same. The holding of Tracht applies to the facts of this case, and the trooper's warrantless entry into the garage did not violate Akins' Fourth Amendment rights.

(App. to Pet. at A-7.)

The decision acknowledges that under Minnesota law, the garage is considered curtilage. This is consistent with Oliver v. United States, 466 U.S. 170, 180, 104 S.Ct. 1735, 1742 (1984). In the instant case, the Minnesota Court of Appeals analyzes whether an officer violates a person's Fourth Amendment rights by entering the curtilage under a legitimate expectation of privacy standard. The decision applies the factors enumerated in U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134 (1987), namely (1) the proximity of the area to the house; (2) whether the area is included within an enclosure surrounding the house; (3) the nature of the uses of the area; and (4) the steps taken by the resident to protect the area from observation by people passing. Id. at 301, 107 S.Ct. at 1139.

The decision cites numerous consistent decisions by other state courts holding that police do not violate the Fourth Amendment by going on to property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches. (App. to Pet. at A-5 to A-6.) The decision notes that the order in which the state courts apply the factors are different than in Dunn, but concludes there is no legal significance to the varying

analytical approaches because both ultimately seek to determine whether a person has a legitimate expectation of privacy in an area. (App. to Pet. at A-6.) As such, the Minnesota Court of Appeals decision does not conflict with decisions of this Court, and the Petition should be denied.

2. The Minnesota Court of Appeals' Holding that the Officer had Justifiable Grounds to Stop Petitioner's Vehicle does not Conflict with Relevant Decisions of this Court

Petitioner argues that this Court should review whether the Trooper had a sufficient basis to initiate the stop of Petitioner's vehicle. Petitioner is unable to cite a single case that is at odds with the decision of the Minnesota Court of Appeals. The case relied upon by Petitioner, Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921 (1972), supports the decision by the Minnesota Court of Appeals. Adams affirmed the constitutionality of a police stop based on the information of an unnamed informant. In Adams, the officer did not make any personal observation of the suspect prior to the stop. Id. 407 U.S. at 144-5, 19 S.Ct. at 1922-23. The Adams opinion did note that "some tips, completely lacking in indicia of reliability, would warrant no police response or require further investigation before a forcible stop of a suspect would be authorized." Id. 407 U.S. at 147, 19 S.Ct. at 1924. However, the present case is one where there were numerous indicia of reliability.

The 911 caller provided more than ample information to justify the stop of Petitioner's vehicle by the Trooper. After identifying herself, the caller, at the request of the dispatcher, followed the vehicle along a state highway and provided the 911 dispatcher contemporaneous reports of numerous instances of erratic driving behavior by the vehicle, including weaving from side-to-side, moving from left lane to right lane in heavy traffic, driving on the shoulder, and almost hitting

barricades. The dispatcher obtained the caller's name and phone number. The Trooper made visual confirmation of the caller's vehicle being the vehicle following Petitioner. Having received reliable information from a citizen witness, the Trooper would not be fulfilling his duty if he had not attempted to investigate the information provided.

Because the decision of the Minnesota Court of Appeals is consistent with this Court's decisions on the issue, the Petition for Writ of Certiorari should be denied.

3. The Minnesota Court of Appeals' Holding that the Criminal Prosecution Subsequent to the Civil Implied Consent Litigation did not Violate the Due Process Clause is not in Conflict with Relevant Decisions of this Court

Appellant argues that his right to due process has been violated by the City of Eden Prairie, Minnesota's decision to pursue the criminal prosecution of this case after the Minnesota Commissioner of Public Safety's decision to stipulate to dismissal of the civil appeal. According to Petitioner, it is unfair to force him to adjudicate the same issues in the criminal courts. It is noteworthy that the only decision on the disputed evidentiary issue in the implied consent hearing was adverse to Petitioner and denied his motion to suppress.

Petitioner cites California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984) as the case which is contrary to the Minnesota Court of Appeals decision. However, there is nothing in Trombetta which bears on this case. The Petition for Writ of Certiorari should be denied.

CONCLUSION

The Minnesota Court of Appeals correctly applied the law as set by this Court. Petitioner disagrees with the result, but does not coherently explain how the application was flawed. For the foregoing reasons, review is not warranted. Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: August 28, 2000

Respectfully submitted,

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